

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date **May 10, 2006** Time **9:30 to 4:30 PM** Place **Room 4112, State Office Bldg**

### Members

#### Commission Members

(Attendees = x)

x Chairperson, Joyce W. Clark, *Washington*    xDarwin L. Johnson, *Wasatch*  
xDavid M. Lattin, *Salt Lake*    Glen W. Roberts, *Utah*    xR. Curt Webb, *Cache*

#### Department Staff

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	xJilene Whitby <i>PIO/Recorder</i>	xDarrel Powell <i>Dir. Market Conduct</i>
xGerri Jones <i>MC Examiner</i>	xSheila Curtis <i>MC Examiner</i>	Brad Tibbitts <i>Dir. Life &amp; P&amp;C</i>	xGale Lemmon <i>AG Prosecutor</i>

#### Public

Joe Corbin	James Seaman	Mark Webb	Jack Marinello
Jenise Jarrett			

### Minutes

#### I. Welcome and Introductions - Chair, Joyce Clark

Joyce began the meeting at 9:30 a.m.

#### II. Adoption of Minutes of Previous Meeting

Curt moved to accept the minutes without change. Darwin seconded the motion. The vote was unanimous in its favor.

#### III. Review & Concur with Licensee Report / Mickey

Mickey provided each board member with a copy of April's licensing report. The board reviewed the report. Darwin moved to accept report. Curt seconded the motion and the vote was unanimous in its favor.

#### IV. Review & Concur with Enforcement Case Report / Gale

The board reviewed the enforcement cases. Darwin moved to concur with the report and David seconded the motion. The vote was unanimous in favor of the motion.

#### V. New Business - Time Certain

- **Mobile Notaries / Jenise Jarrett**

- Jenise provided a handout. She has been in mortgage business for 13 years and is a notary. A signing agent gets signatures, without explaining the loan. National mortgage companies use signing agents to witness closings and to notarize documents. Some mortgage companies don't use title agents but just go directly to a signing service. Signing services and signing agents are unable to become compliant with state guidelines and as a result many have closed their doors. Some have obtained title escrow or producer licenses. A new law is needed to allow signing agents to do signings in a home or office. They should also be able to pick up funds. Jenise suggested taking "loan closing" out of the title escrow producer license. Still keep the designation chain within state title companies but with the settlement agents who fund the loan, not the actual loan closer. Come up with a new license for the loan closer or signing agent position so standards may be set, like the requirement of a bond. The National Notary Association has a signing agent section on website that shows which states do and don't allow them. Notaries cannot obtain a Signing Agent Certification in Utah because of the confusion with the law.

- Curt asked if the department had an official position on this? Jenise said it had several. Gerri explained that if a person conducts a real estate closing and handles money they need an escrow license. We also introduced legislation requiring a notary to comply with 31A-23a-406. The department also sent a letter to Fran Fisher at the state notary office stating that notaries were allowed to notarize signatures in a closing as long as they don't pick up money or explain documents. Jenise said national title companies give direction as to the key features of a document and how to point them out in a closing.
- Joe Corbin expressed his belief that signing agents should be licensed to pick up money. Jenise agreed but did not think it should be a title escrow license. Joe asked Jenise what she charged and how she came up with the charge. She said she charges \$75 per closing. It is based on travel distance. The fee is not disclosed up front. She has E&O coverage.
- Joe told of how a personal loan was closed by a signing agent who provided legal advice, explained the documents and charged \$90. The signing agent did not have insurance. The notary law gives no protection or recourse if a problem occurs. Joe told the title company he was thinking of suing their signing agent. They would take no responsibility for the signing agent's actions. Ameriquest is in the middle of a \$320 million lawsuit based on this very issue. Utah uses escrow agents to finalize loans. Only national companies want to use signing agents because they don't have to open an office here. Borrowers want closers to come into their home or place of business. This sets them up for high liability and risk.
- Joyce said the Commission would take this under advisement and talk with the department about it.
- **Property Profiles / Mark Webber**  
Mark Webber of First American Title addressed the Commission.
  - In regards to the notary issue he thought mobile notaries provided a valuable service.
  - The proposed rule R592-3 (as first proposed) regarding marketing information package creates a heavy burden to police these types of activities. We should be able to provide real estate information, listing package regarding the industry. This is a service to consumers.
  - Darwin agreed. Since they can't provide website access to Mapquest they provide mailing labels. How do they decide a cost? Joe agreed. Gerri noted that marketing packages had been deleted from the rule.
  - Joe said some title companies are offering title valuations for free. City Financial is receiving free property evaluations with their title reports. He will provide more information.
  - Jack Marinello of First American – Providing valuations: We are not in position to provide values of property. A title agent going into the title records can find out what property last sold for. Joe said this is not what was being done. Curt said the Real Estate Division has a board that this should be brought to the attention of.
  - Joe provided a recording of the conversation with his signing agent that related how hard it was to ask an agent questions when a signing agent is closing your loan. Joe said he had filed a complaint with the department. Mickey said that the law as it stands allows signing agents to close if they just notarize a document and do not give instructions. Joe said his closing involved no title insurance or lender policy. LandAmerica disbursed all funds. Curt noted that we don't regulate lenders. Joe said that if the title company does the closing there is no one to ask questions to. Jack asked if title agents could settle a closing without a real estate agent being present? Gerri said they could.
- **Split Closings / Canyon Anderson**  
Was not in attendance.

- **Discuss Model Acts: mandating minimum rates, other changes.**

Curt made the motion that they discuss Fiduciary and split closings to include those who were visiting. All agreed. This will be discussed at the next meeting.

## VI. Old Business

- **Split Closings & Fiduciary Responsibilities**

- Mark said LandAmerica no longer provides closing protection letter under certain circumstances, without written consent of lender. We applauded their efforts. We have concerns about split closings. Claims are not high on split closings but the risk is high. He believes split closings violate instructions from lenders and many lenders don't know they are occurring. If they did they would probably work to stop them. Split closings violate the good funds law (31A-23a-406). Loan originators like the control it gives them. First American offers a \$50 discount to owner, borrower and lender when they do not have a split closing. A safe harbor should be provided in the form of procedures that must be followed when involved in a split closing.
- Jack's opinion, as a real estate teacher, is that the decision of who will provide insurance and services should be determined by the buyer and seller and included in the contract. Utah real estate contracts do not allow for this type of an agreement. Here agents settle everything. Gerri said that a few years ago representatives of the department worked with the Real Estate Commission about this when they were revising the REPC. The commission agreed to amend the REPC to include a choice of title agent; however, the Utah Association of Realtors (UAR) opposed it, so it was withdrawn. Jack said he would like to see it in the contract but some influential people don't want it there.
- Curt suggested that the Commission could propose a rule to eliminate split closings, but statutory support for doing so is weak. Underwriters are the only ones with the power to change the market. Maybe the market will solve the problem, especially if incentives are included. Perhaps the real estate company will add it to the REPC. Jack said that incentives are already being used if you go through the same title company.
- Mark said he liked the idea of simultaneous closings. If a lender's policy is issued simultaneously with the seller and lender's policy there is a discount or a special rate. You don't have to search the property again. As split closings came into being, lenders policies could be issued for the same discounted rate for political reasons. Joe thought split closings were good because they provide competition. Gerri said this was an issue of operating at less than cost of business.
- Jack: Is the Department of Insurance able to act independent of the Real Estate Division? If so, you can change your rule or law and then Real Estate will have to comply? Can you not just make rules for the good of the public? Mark asked if there would be a problem with underwriters making this a provision of the underwriting agreement? Gerri said no.

- **Liaison Meeting issues**

- Mortgage bankers - New General Closing Instructions
- Change to Marketing Rule to up amount per day for inflation
- Problem regarding "builders' rates"

- **Took a Break at 11:25a.m. Reconvened at 11:32a.m.**

- **Clarify double escrow / Darwin**

Each is funded. Underwriters must be contacted to determine what can be done. Gerri said that contract law seems to be a problem in regards to flips and they violate good funds. Sometimes flips result in a person selling property they don't own.

- Joyce suggested some of commission members meeting with the Real Estate Commission. Gerri asked if she could be included. Joyce said yes.

- Darwin: Flips are done because there is no money coming from the first buyer. Curt thought they had decided the law was not specific in this area. We cannot say that all

flips are illegal. There is nothing in the law that says that. Gerri said the department was teaching which flips were legal and which ones were not in the CE classes.

- Jack said all flips were illegal. To buy low and sell high is legal. Curt asked why a lender has to know a flip is involved? The real issues with flips are: 1) Does it have to be disclosed? and 2) Can the first sale be funded by the proceeds of the second sale? Perri said that the definition of a flip is key. It must be fact specific. Does person B have title to transfer to C? Jack: Equitable Title says you have the title and thus can transfer it. Curt said if the person has the purchase contract then they can sell the property. We sell property all the time before we get title. Jack wondered if it was a violation to sign a real estate purchase contract, settle and fund with an FHA loan before receiving a settlement statement? Some thought several violations were involved here. Jack said he reported several violations to HUD. Jack said the March 31, 2006 issue of the Tribune had an article about a Utah grand jury that had indicted someone for real estate fraud regarding a distressed seller.

- **Can Missed Questions be Reviewed After Taking a Test?** / Mickey

Should have an answer in about a month.

- **Verify Process of making "Finding"** / Mickey? (should this be left of the agenda?)

- **C.E. Class outline, set times and assignments** / Glen

Glen was not in attendance.

- **Escrow Filing Rules R592-3 & 4 - Additional changes** / Mickey

- Regarding Rule R592-3

- Gerri said Subsection 5 of Section 4 needed to be deleted.
    - Perri said that the first letter of each word of "Schedule of Minimum Charges for Escrow Services" needed to be capitalized throughout this rule and R592-4
    - Perri said to add "and" at the end of the sentence in Section 6(2)(a).

- Regarding Rule R592-4

- Perri didn't think 4-5.(1)(c)(ii) was supposed to be deleted. Gerri said that (b)(ii) says the same thing. It was decided it should be struck.
    - Perri provided wording that should have been in 4-5.(2). "Other services which are not specifically listed on the Schedule of Minimum Charges for Escrow Services may be rendered provided a justifiable charge is made." Curt made the motion to put (2) back in as worded by Perri. Darwin seconded the motion. The vote was unanimous in favor of the motion.

- Transmittal document

- Perri said the "report" referred to in 7.c. should be capitalized.
    - Perri noted that in 12.b.(ii) strike out everything but "Reports." This does not include branch office or annual reports. There is no fee for either one.

- Curt moved to adjourn long enough to get lunches then return to finish meeting while eating. All agreed.

- Darwin made the motion to make all the changes discussed in Rule R592-3, R592-4 and the transmittal form then file for a second comment period. David seconded the motion. The vote was unanimous in favor of the motion. It was agreed the hearing would be held June 14, at 8a.m. and 9a.m. (It was later decided a hearing was not needed, just a comment period.) Order lunch in and have the regular Commission meeting after.

- Broke for lunch at 12:40p.m. Reconvened at 1p.m.

- Sharing office space with realtors - Update / Gerri

VII. **Other Business from Committee Members**

Darwin asked about getting C.E. credit for this meeting. Mickey said he was working on it.

VIII. **Reminder:** Liaison Meeting first Monday in June

IX. **Adjourned** at 1:20p.m

*Next Meeting*

9:30 *a.m.*

June 14, 2006	July 12, 2006
August 9, 2006	September 13, 2006
October 11, 2006	November 8, 2006
December 13, 2006	